



FEDERAL ELECTION COMMISSION
Washington, DC 20463

May 10, 2006

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

ADVISORY OPINION 2006-16

Richard E. Coates, Esquire
200 West College Avenue, Suite 311 B
Tallahassee, FL 32301

Dear Mr. Coates:

We are responding to your advisory opinion request on behalf of Florida State Representative Nancy Detert, concerning the application of the Federal Election Campaign Act of 1971, as amended ("the Act") and Commission regulations, to the reimbursement and reporting of \$94,616.90 in funds misappropriated by the former treasurer of the Campaign to Elect Nancy Detert ("the Detert Committee"). The Detert Committee has already accepted a partial reimbursement in the amount of \$67,450, representing funds that were not spent by the former treasurer. You ask whether the Detert Committee may also accept reimbursement of the remaining \$27,166.90 from funds that have been provided to the former treasurer by his parents.

The Commission concludes that the Detert Committee may immediately accept the \$27,166.90.¹ As discussed below, the Detert Committee should report all misappropriated funds as an "Other Disbursement," and report any reimbursement separately as an "Other Receipt" on its July Quarterly Report.

Background

The facts presented in this advisory opinion are based on your letters received on April 24 and April 28, 2006, and an e-mail communication on May 3, 2006.

Ms. Detert is a candidate for the Republican nomination for the U.S. House of Representatives from the 13th Congressional District of Florida. In June 2005, Ms. Detert

¹ Similarly, the Commission concludes that the Detert Committee's acceptance of the \$67,450 was permissible. See footnote 4.

appointed Randy Maddox to be the treasurer of her principal campaign committee, the Detert Committee.² On April 3, 2006, Randy Maddox “misappropriated \$94,616.90, via an unauthorized wire transfer” from the Detert Committee to his personal bank account. Two days later, he withdrew the funds from his bank account and took the funds with him to Argentina. Ms. Detert was informed of the misappropriation on April 9, 2006.³

On April 13, 2006, Randy Maddox returned to the United States with \$67,450 in cash, which was then deposited into a bank account. On that same date, Randy Maddox’s parents, Robert and Ingrid Maddox, wishing to aid their son, applied for a home equity loan. On April 14, 2006, Ingrid Maddox obtained a bank check for \$94,616.90, consisting of the \$67,450 deposited on the previous day and \$27,166.90 in funds drawn from the parent’s home equity loan, and delivered it to her son’s attorney, Mark Reinhold. Mr. Reinhold placed the funds in his client trust account where the disposition of the funds is within Randy Maddox’s sole discretion. On April 28, 2006, Ms. Detert accepted \$67,450 from the client trust account and deposited the funds into the Detert Committee’s account, leaving \$27,166.90 of Randy Maddox’s funds in his attorney’s client trust account.

Ms. Detert has notified the Federal Bureau of Investigation of the misappropriation and has appointed a new committee treasurer to replace Randy Maddox.

Questions Presented

- 1. May the Detert Committee accept and deposit reimbursement of misappropriated funds from the \$27,166.90 that remains in Randy Maddox’s attorney’s client trust account?*
- 2. How should the Detert Committee report the misappropriated funds and the receipt of any reimbursement?*

Legal Analysis and Conclusions

- 1. May the Detert Committee accept and deposit reimbursement of misappropriated funds from the \$27,166.90 that remains in Randy Maddox’s attorney’s client trust account?*

² The Detert Committee filed its Statement of Organization with the Commission on June 27, 2005.

³ At the time of the misappropriation, the Detert Committee had raised approximately \$125,000 and had expended some funds for campaign expenses. You indicate that the misappropriation left the Committee without sufficient funds to conduct Ms. Detert’s campaign effectively; the copy of the wire transfer document attached to your April 24 letter discloses that only \$3,921.82 remained in the account after the transfer. You note that Ms. Detert is honoring the Rules of the Florida House of Representatives by not personally soliciting campaign contributions during the current State legislative session, which runs through May 5, 2006. See Rules of the Florida House of Representatives, Rule 15.3(b)(1).

Yes, the Detert Committee may immediately accept and deposit the \$27,616.90 from funds held in the client trust account as a reimbursement by Randy Maddox of misappropriated funds.⁴

Unlike the \$67,450 that has already been reimbursed by Randy Maddox to the Detert Committee, the funds provided by Mr. Maddox's parents replace a portion of the misappropriated funds that Mr. Maddox spent and therefore are not directly traceable back to the misappropriated funds. Nevertheless, where Randy Maddox's parents have provided their son with funds solely in an effort to mitigate potentially severe criminal liability and financial jeopardy for their son, the provision of funds by Mr. Maddox's parents is not for the purpose of influencing a Federal election and would not constitute a contribution by his parents to the Detert Committee.⁵ Randy Maddox's parents are only interested in aiding their son, not the Detert Committee. The fact that the victim of the misappropriation, and hence the ultimate recipient of the restitution, is the Detert Committee is merely incidental to Mr. Maddox's parents providing the funds to their son.

2. How should the Detert Committee report the misappropriated funds and its receipt of any reimbursement?

The misappropriation of the \$94,616.90 by Randy Maddox constituted a reduction in the Detert Committee's cash on hand at that time and the committee should report the total amount as an "Other Disbursement" on its 2006 July Quarterly Report. The Detert Committee should include this amount in the total of "Other Disbursements" on Line 21 of the Detailed Summary Page. The Detert Committee should also itemize the disbursement by disclosing, on Schedule B, the name and address of Randy Maddox as the recipient, and the amount, and date of the misappropriation. In addition, the Detert Committee should provide a brief description of the circumstances. *See* 2 U.S.C. 434(b)(4)(G) and (6)(A); 11 CFR 104.3(b)(2)(vi) and (4)(vi); *see also* Advisory Opinion 1989-10 (DeConcini '88 Committee).

The Detert Committee should report separately the receipt of both the \$67,450 and the \$27,616.90, each as an "Other Receipt" on its July Quarterly Report. The Detert Committee should include both amounts in the total of "Other Receipts" on Line 15 of the Detailed Summary Page. The Detert Committee should also itemize these receipts by disclosing, on Schedule A, the name and address of Randy Maddox as the source, and the amounts, and dates on which the funds were returned. In addition, the Detert Committee should provide a brief

⁴ Although the Detert Committee has already accepted a reimbursement of \$67,450 from Mr. Maddox, which as past activity is not the subject of this advisory opinion (*see* 11 CFR 112.1(b)), the Commission notes that the acceptance of these funds was permissible because the returned \$67,450 was directly traceable to the very funds misappropriated from the Detert Committee. Thus, the transfer of these funds from the client trust account to the Detert Committee was not a contribution to the committee but merely a return of misappropriated funds. *See* Advisory Opinion

2000-26 (Citizens for Deckard) (regarding traceable funds); *see also* Advisory Opinion 1991-38 (DeConcini '88 Committee and DeConcini '94 Committee) (regarding the treatment of repayments of embezzled funds).

⁵ Randy Maddox is not himself a Federal candidate and this situation does not involve any payment by parents to assist a candidate-child with personal expenses that occur during his or her candidacy, which may constitute a contribution by the parents to the candidate. *See* 11 CFR 113.1(g)(6).

description of the circumstances, including a cross-reference to the “Other Disbursement” entry for the misappropriation. *See* 2 U.S.C. 434(b)(2)(J) and (3)(G); 11 CFR 104.3(a)(3)(x) and (4)(vi); *see also* Advisory Opinion 1991-38.

The Commission expresses no opinion regarding any tax ramifications of the proposed activities because those questions are not within the Commission’s jurisdiction.

This response constitutes an advisory opinion concerning the application of the Act and Commission regulations to the specific transaction or activity set forth in your request. *See* 2 U.S.C. 437f. The Commission emphasizes that, if there is a change in any of the facts or assumptions presented, and such facts or assumptions are material to a conclusion presented in this advisory opinion, then the requestor may not rely on that conclusion as support for its proposed activity.

Sincerely,

(signed)

Michael E. Toner
Chairman

Enclosures (Advisory Opinions 2000-26, 1991-38, and 1989-10)